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**SURFACE  
TRANSPORTATION BOARD**

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C.

Finance Docket No. 35246

JAMES RIFFIN – § 10902 ACQUISITION AND OPERATION APPLICATION –

VENEER SPUR – IN BALTIMORE COUNTY, MD

**FILED**

SEPT 8 - 2010

**SURFACE  
TRANSPORTATION BOARD**

**NOTICE OF APPEAL**

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ENTERED  
Office of Proceedings

SEP 8 - 2010

Part of  
Public Record

1. Now comes James Riffin (“**Riffin**”), the Applicant in the above entitled proceeding, who herewith files this Notice of Appeal of the August 19, 2010 Decision in the above entitled proceeding.

2. In a decision served on August 19, 2010 (“**Decision**”), the Director, Office of Proceedings, dismissed Riffin’s Application to acquire and operate the Veneer Spur. The basis for the Director’s decision was three fold:

A. The Board’s May 17, 2010 decision in AB 167 (Sub-No. 1190X) exempting the Lehigh Valley Line from the OFA provisions.

B. The Board’s April 5, 2010 decision in AB 290 (Sub-No. 311X) exempting the Cockeysville Industrial Track from the OFA provisions.

C. The January 22, 2010 affirmation by the U.S. Court of Appeals, D.C. Circuit, of the Board’s denial of Riffin’s Motion to Compel CSX to reissue a deed to Riffin’s Allegany County Line to Riffin in his individual capacity. CADCase No. 08-1208.

3. The Director's decision to dismiss Riffin's Application was premature.

4. The Board's May 17, 2010 decision in AB 167 (Sub-No. 1190X), exempting the Lehigh Valley Line from the OFA provisions, has been appealed to the U.S. Court of Appeals, D.C. Circuit. It was docketed Case No. 10-1150. In the event the Court of Appeals vacates the Board's decision, the Board's decision will be void *ab initio*, thereby undercutting the legal basis for the decision rendered by the Director of Proceedings.

5. The Board's April 5, 2010 decision in AB 290 (Sub-No. 311X) exempting the Cockeysville Industrial Track from the OFA provisions, has been appealed by two parties to the U.S. Court of Appeals, D.C. Circuit. These appeals have been docketed Case Nos. 10-1130 and 10-1133. In addition, Riffin has filed a Petition to Reopen the proceeding. If the Board's decision is reopened, or if the Court of Appeals vacates the Board's decision, then the Board's decision will be void *ab initio*, thereby undercutting the legal basis for the decision rendered by the Director of Proceedings.

6. The Court of Appeals' decision in Case No. 08-1208, does not resolve the deed issue. On August 9, 2010, Riffin's bankruptcy trustee filed an Adversary Complaint in the U.S. Bankruptcy Court for the District of Maryland, naming CSX as a defendant. This proceeding was docketed Adversary No. 10-0602 in Case No. 10-11248. The Trustee is asking the bankruptcy court to order CSX to issue a deed to the Allegany County Line to Riffin, in his individual capacity. When the bankruptcy court issues its order compelling CSX to deed the Allegany County Line to Riffin, that will remove the only basis for the Board's decision in FD No. 35245, holding that Riffin was not a common carrier by rail because Riffin did not have a "suitable legal interest" in the Allegany County Line.

7. The moment CSX delivers a deed to the Allegany County Line to Riffin in Riffin's individual capacity, Riffin will become a rail carrier. The moment that happens, the basis for the Board's decision in FD 35245 will evaporate, thereby undercutting the legal basis for the decision rendered by the Director of Proceedings. In addition, Riffin's bankruptcy proceeding

will immediately be dismissed, since railroads cannot file for Chapter 7. See 11 U.S.C. 109 (b)(1).

8. In addition, the Board's decision in FD 35245 has also been appealed to the U.S. Court of Appeals, D.C. Circuit, where it was docketed Case No. 09-1277. Riffin filed his Final Reply Brief in that proceeding on September 7, 2010. If the Court of Appeals vacates the Board's decision in FD 35245, then the Board's decision will be void *ab initio*, thereby undercutting the legal basis for the decision rendered by the Director of Proceedings.

9. The May 19, 2009 decisions in Docket Nos. AB-6 (Sub-No. 430X) and FD 35164, wherein the Board exempted a portion of the Chickasha Line in Oklahoma City, OK from the OFA provisions, has also been appealed to the U.S. Court of Appeals, D.C. Circuit. This appeal was docketed Case No. 09-1161. The Court of Appeals has scheduled oral argument for September 20, 2010. Riffin expects the Court of Appeals will render its decision around the third week of January, 2011. [Oral argument in Case No. 08-1190 (FD No. 34997) occurred on September 18, 2009. The Court of Appeals issued its Opinion vacating the decision of the Board on January 22, 2010, or about 4 months after oral argument.] If the Court of Appeals vacates the Board's decision, then Riffin will become a Class III carrier in Oklahoma City, thereby undercutting the legal basis for the decision rendered by the Director of Proceedings.

10. In a request for Summary Affirmance of the Decision of the Board in AB 167 (Sub. No. 1190X), the Board argued that because Riffin has filed for bankruptcy, he cannot be 'financially responsible.' This conclusion by the Board is fraught with problems:

- A. The reason Riffin filed for bankruptcy is because the STB arbitrarily and capriciously ruled that the construction of Riffin's Cockeysville maintenance-of-way facility was not subject to the STB's jurisdiction. See *Riffin v. Surface Transp. Bd.*, 592 F.3d 195 (D.C. Cir. 2010) / STB FD No. 34997 served May 1, 2008. Maryland's courts used the STB's May 1, 2008 decision to affirm over \$800,000.00 in Baltimore County liens against Riffin, and to affirm over \$50,000.00 in Baltimore City liens against

Riffin. Even though the Court of Appeals vacated the STB's May 1, 2008 decision on January 22, 2010, and remanded the matter back to the STB for further proceedings, to date, **8 months after the Court's decision, the STB has failed to take any action.** This failure by the STB to render a decision consistent with the Court's January 22, 2010 decision, precipitated Riffin's bankruptcy filing, and will continue to delay resolution of Riffin's bankruptcy proceeding.

- B. On August 9, 2010, Riffin's bankruptcy trustee filed an adversary complaint against CSX, asking the bankruptcy court to compel CSX to deed the Allegany Line to Riffin. The Trustee used the same legal arguments Riffin advanced in his Brief in Case No. 09-1277. (Riffin provided the Trustee with a copy of his Brief.)
- C. The moment CSX deeds the Line to Riffin, Riffin will immediately become a common carrier by rail, since the only reason the STB held that Riffin is not a common carrier by rail, is due to CSX's failure to deed the Line to Riffin. (If the Court of Appeals does not so rule sooner.) The moment the Line is deeded to Riffin, Riffin's bankruptcy petition will have to be dismissed, since railroads may not file for Chapter 7. See 11 U.S.C. 109 (b)(1).
- D. Riffin has advised his Trustee that he has over \$2.5 million in Title Insurance Claims, which the Trustee has started to pursue. (The title insurance policies associated with Riffin's Cockeysville properties, states that if a court finds that Riffin does not have good title to all the land listed in his title insurance policy, the title insurance company must indemnify Riffin, and his lending banks, up to the face amount of the title insurance policies. The Circuit Court for Baltimore County ruled that 3,000 SF of Riffin's land belongs to Baltimore City. The face amount of the title insurance policies is over \$2.5 million.)
- E. If the Court of Appeals and / or the bankruptcy court rules that Riffin is a common carrier by rail, that will negate Baltimore County's \$800,000 claim against Riffin.

When combined with the \$2.5 million in title insurance claims, more than \$3.3 million will be added to Riffin's estate. That will reduce Riffin's debt to about \$1.0 million (a mortgage on another one of Riffin's properties). Riffin's Cockeysville properties will become free and clear of all liens. Since these properties have been appraised at \$2.8 million, Riffin's net worth will be \$2 million or so. Consequently, Riffin does not presently anticipate filing for Chapter 11 reorganization after his Chapter 7 petition is dismissed. It is interesting how God makes things work out.

11. All Riffin has to do is prevail in one of the many cases he has on appeal, in order to become a rail carrier. The moment Riffin becomes a rail carrier, the Director's decision loses its legal underpinning.

12. For all of the above reasons, Riffin argues that the Director's decision was issued prematurely, and is likely to be vacated due to the loss of the legal underpinning for the Director's decision (that Riffin is not a rail carrier).

13. WHEREFORE, Riffin would ask that:

EITHER the Director recall her August 19, 2010 decision, then keep the matter in abeyance until all of the above proceedings have been concluded;

OR the Board vacate the Director's decision;

OR the Board keep this appeal in abeyance until all of the above proceedings have been concluded, then vacate the Director's decision;

AND for such other relief as would be appropriate.

Respectfully,



James Riffin

1941 Greenspring Drive

Timonium, MD 21093

(443) 414-6210

### **CERTIFICATE OF SERVICE**

I hereby certify that on the 8<sup>th</sup> day of September, 2010, a copy of the foregoing Notice of Appeal, was served by first class mail, postage prepaid, upon James R. Paschall, Senior General Attorney, Norfolk Southern Railway Company, Law Department, Three Commercial Place, Norfolk, VA 23510; and upon Charles Spitulnik, Kaplan Kirsch Rockwell, Ste 800, 1001 Connecticut Ave, N.W., Washington, DC 20036, counsel for MTA, and Allegany County.



James Riffin

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DO

SERVICE DATE – AUGUST 19, 2010

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35246

JAMES RIFFIN—ACQUISITION AND OPERATION—VENEER SPUR—IN BALTIMORE  
COUNTY, MD.

Decided: August 18, 2010

On May 6, 2009, James Riffin filed an application to acquire and operate, under 49 U.S.C. § 10902, approximately 400 feet of track formerly known as the Veneer Mfg. Co. Spur (Veneer Spur) located at milepost 15.05 on the Cockeysville Industrial Track (CIT), in Cockeysville, Baltimore County, Md. On the same date, Riffin filed a petition for declaratory order posing the following questions: (1) did Riffin become a common carrier by rail when the Board authorized him to acquire a line of railroad in Allegany County, Md. (Allegany Line);<sup>1</sup> and (2) would Riffin's operation of the Veneer Spur constitute operating an additional line of railroad. James Riffin—Petition for Declaratory Order, FD 35245.

By decision served May 29, 2009, this proceeding was held in abeyance pending resolution of the questions before the Board in FD 35245. In a decision served September 15, 2009, in that docket, the Board found that: (1) Riffin is not a rail carrier because he lacks the ability to provide rail service on the Allegany Line, and (2) because Riffin is not a rail carrier and does not operate any rail line, his proposal to operate the Veneer Spur does not qualify as the operation of an "extended or additional rail line" under 49 U.S.C. § 10902.

On October 5, 2009, Riffin filed a motion asking the Board to postpone rendering a further decision in this proceeding on the basis of its ruling in FD 35245 until: (1) the United States Court of Appeals for the District of Columbia Circuit ruled on a pending Riffin appeal that could affect his status as a carrier, and (2) the Board resolved the status of Riffin's offer of financial assistance (OFA) to acquire and operate a portion of rail line under 49 U.S.C. § 10904, in Consolidated Rail Corp.—Aban. Exemption—In Hudson County, N.J., AB 167 (Sub-No. 1190X).

The court case and AB 167 (Sub-No. 1190X) have now been resolved in a manner adverse to Riffin's position that he is a carrier. In an unpublished decision issued January 22, 2010, in James Riffin v. Surface Transportation Board and United States of America, U.S.C.A.,

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<sup>1</sup> By decision served on August 18, 2006, the Board permitted Riffin to substitute for his then-corporate affiliate, WMS, LLC, as the prospective purchaser of the 8.54-mile Allegany Line. CSX Transp. Inc.—Aban. Exemption—In Allegany County, Md., AB 55 (Sub-No. 659X) (STB served Aug. 18, 2006).

D.C. Cir., No. 08-1208, the court upheld a prior Board decision refusing to compel CSX Transportation, Inc., to reissue the deed to the Allegany Line to Riffin, which, had the Board granted Riffin's request, could have made him a carrier.<sup>2</sup> In a decision served May 17, 2010 in AB 167 (Sub-No. 1190X), the Board exempted the entire Lehigh Valley Line from the OFA provisions of 49 U.S.C. § 10904. Therefore, Riffin will not become a carrier on the Lehigh Valley line because there is no line for him to potentially acquire pursuant to 49 U.S.C. § 10904.

As a result of these decisions, there is no longer any reason to hold this proceeding in abeyance. The application will be dismissed. First, Riffin has sought to acquire the Veneer Spur under 49 U.S.C. § 10902, which applies only to Class II or III carriers, and the Board has determined that Riffin is not a rail carrier. Second, assuming the Veneer Spur was connected to the CIT (and thus the national rail system) when Riffin filed his application, it no longer is. In a decision served April 5, 2010, the Board authorized Norfolk Southern Railway Company (NSR) to abandon the freight operating rights on a portion of the CIT that included milepost 15.05. Norfolk Southern Ry. Co.—Petition for Exemption—In Baltimore City and Baltimore County, Md., AB 290 (Sub-No. 311X) (STB served Apr. 5, 2010), stay den. (STB served May 4, 2010). On May 5, 2010, NSR filed, in that docket, a notice indicating it was consummating its abandonment authority, effective that day. The Veneer Spur thus cannot be considered a part of the national rail system and is not subject to the Board's authority.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Riffin's application to acquire and operate the Veneer Spur is dismissed for the reasons discussed above.
2. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

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<sup>2</sup> The Board issued its decision in CSX Transp. Inc.—Aban. Exemption—In Allegany County, Md., AB 55 (Sub-No. 659X) (STB served Apr. 24, 2008). CSXT had consummated the sale in July 2006 and had issued the deed to WMS.